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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,455	11/08/1999	CHRISTOPHER JAMES DANEK	435712000921	6666

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BRONCUS TECHNOLOGIES, INC.
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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 09/24/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/436455

Applicant(s)

Daneh

Examiner

d-shay

Group Art Unit

3839

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13, 18-75, 77, & 79-94 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13, 18-52, 54-75, 77, & 79-94 is/are rejected.
- ☒ Claim(s) 53 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-13, 18-75, 77, 79-83, and 85-92 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no description as to how to extract the temperature signal from a temperature sensor, which is in electrical communication with the conductive leg; there is no disclosed electrode that generates RF energy.

Claims 73, 77, and 83-94 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 73 and 77 are substantial duplicates. In claim 83 "each electrically conductive member" lacks positive antecedent basis.

Claims 1-8, 10-13, 18-22, 24, 30, 44-52, 57-60, 62, 70, 71, and 74 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Farley et al.

See Figures 2, 4-6, 8, and 9 column 3, line 5 to column 8, line 34; column 9, line 66 to column 10, line 47; column 11 line 59 to column 12 line 3; and column 15, lines 8-14.

Claims 1-13, 18-30, 35-43, 54-56, 61, 63-70, 72-75, 77, and 79-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley et al in combination with Burnside et al. Farley et al teach a device claimed, as set forth above, as well as the equivalence of conductive electrode on insulative legs and conductive electrodes on conductive legs. Burnside et al teach

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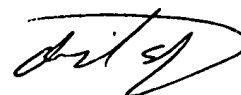
an energy transfer device which can have the claimed basket length (see column 40, lines 34-66); various numbers of legs (see Figure 7-9, 39A, 39B, 40A, and 55); various temperature sensor locations (see column 17 lines 5-30); wherein the attaching of Burnside et al is equivalent to soldering, welding, or adhesive bonding; has a polymeric heating element (see column 38, line 34-41); with each basket leg in a lumen (see Figures 40A and 40B); wherein the wall is reinforced by a metallic member (see Figure 71B); and a wire carrying current (see Figure 55). It would have been obvious to the artisan of ordinary skill to employ the leg, electrode and attaching structure of Burnside et al in the device of Farley et al since these are equivalents in the art, as shown by Burnside et al, or to employ the conductive legs, since these are equivalent to non-conductive legs as taught by Farley et al and to employ sterilization, the visualization system; locating the temperature detector between the leg and the resistively heated element; the use of D.C. current; forming the legs from a single sheet of stainless steel; to stop delivering energy if a temperature change is not detected and including an optical fiber and CCD, since these provide no unexpected result; and since they are not critical, thus producing a device such as claimed.

Claims 31-34 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

Shay/DI

August 25, 2003



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330